

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/03/2003

CORAM

THE HONOURABLE MR.JUSTICE R.JAYASIMHA BABU

and

THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN

C.R.P.NPD.No.765 OF 2002

AND

C.M.P.No.7659 of 2002

& VCMP.No.10389 of 2002

K.Ayyasammy ... Petitioner.

-Vs-

1. Mohanasundari.
2. Minor P.Sathiyaseelan.
3. Minor Madanagopal
4. Pavayammal ... Respondents.

Civil Revision petition filed against the order dated
30.4.2002 in C.F.R.No.7789 of 2002 in E.P.No.116 of 2002 on the file of I
Addl. Sub Judge, Erode.

!For petitioner :: Mr.K.M.Vijayan, Sr.counsel for
M/s.La Law.

^For respondents:: Mr.V.Raghavachari.

:ORDER

N.V.BALASUBRAMANIAN,J.

The question that arises is whether the compensation amount awarded by the Motor Accidents Claims Tribunal on the death of a person in a road accident is or is not part of the estate of the deceased. The brief facts necessary for the disposal of the C.R.P. are that the petitioner had engaged an advocate in the proceedings for enhancement and apportionment of compensation when the lands belonging to the petitioner were acquired by the State. It is stated that the reference Court has ordered the enhancement of compensation amount awarded, and the case of the petitioner is that the petitioner was not fully paid the entire amount of compensation ordered by the court by the advocate. Therefore the petitioner initiated proceedings against the advocate in the Bar Council by way of disciplinary proceedings and also initiated criminal proceedings against him. The advocate denied all the charges levelled against him, however, before the proceedings before the Bar Council and the criminal court could come to an end, the advocate met with a road accident on 31.8.1995 and he also died in the said accident. Thereafter,

the petitioner instituted a suit for recovery of money against the legal representatives of the deceased advocate, namely, his wife, mother and minor children claiming moneys due to him from the deceased advocate as his advocate had not paid the entire amount of compensation received by him and the said suit was decreed against the wife, mother and minor children of the deceased advocate directing them to pay to the petitioner a sum of Rs.14,76,929 .50 with interest from and out of the properties and assets left by the deceased advocate. It is stated that the defendants in the suit, who are the respondents herein, have preferred an appeal in this Court against the judgment and decree of the learned Subordinate Judge and the appeal is still pending.

2. Meanwhile, the legal representatives of the deceased advocate, namely, his wife, minor children and parents have preferred a claim petition before the Motor Accidents Claim Tribunal claiming a compensation of a sum of Rs.25,00,000/- for the death of the advocate arising out of the road accident. The claim was made on the score that had the advocate not met with the accident, he would have lived for another 40 years and contributed much more to his family. The Claims Tribunal passed an award directing the respondents in the claim petition to pay a sum of Rs.14,19,000/- under several heads including loss of consortium, loss of love and affection and funeral expenses with interest at 9% per annum from the date of petition. The Claims Tribunal also ordered for the apportionment of the award amount. The Claims Tribunal, in the award, after permitting the petitioners 1,4 and 5 in the claim petition to withdraw some marginal amounts, directed the balance amount to be deposited in one of the nationalised banks and the Claims Tribunal also directed that the share of the minor petitioners 2 and 3 should be deposited till they attain majority in a nationalised bank.

3. The petitioner herein filed an execution petition to execute the decree obtained by him in the civil suit. He also sought for interim attachment of the properties of the deceased advocate including the deposits lying in the civil court to the credit of the Motor Accidents Claim Original Petition and also the interest amount that accrues on the deposit made in bank. Learned Subordinate Judge, following a decision of this Court in JANAKI ALIAS PATTAMMAL AND OTHERS v. PRABATH FINANCE BY PARTNER R.PRABHAKARAN (I (1986) ACC 100), dismissed the application for interim attachment holding that the compensation awarded by the Claims Tribunal for the death of the victim is not part of estate of the deceased and not liable to be attached. Learned subordinate Judge also held that the relief claimed in the interim application is the same relief which is claimed in the execution petition and therefore, the interim application is not maintainable. It is against the order, the present revision petition has been filed.

4. When the matter came before a learned Single Judge, he felt that in view of the important question of law involved in this case, the matter should be heard by a Bench and hence, the matter is before us.

5. Mr.K.M.Vijayan, learned senior counsel for the petitioner submitted that the amount of compensation awarded by the Claims Tribunal is part of the estate of the deceased. He referred to the provisions of Fatal Accidents Act, 1855, particularly section 2 of the said Act and submitted that the pecuniary loss awarded shall be deemed to be part of the estate of the deceased and therefore, the petitioner was justified in seeking to attach the properties belonging to the deceased which form part of the estate of the

deceased. Learned senior counsel referred to section 60 Code of Civil Procedure and submitted that the amounts lying to the credit of the claim petition are not exempt from attachment and relying on section 52 C.P.C., he submitted that the decree in favour of the petitioner is for payment of money out of the properties of the deceased, it may be executed by attachment and sale of the properties of the deceased. Learned senior counsel referred to the decision of this Court in JANAKI v. PRABATH FINANCE (AIR 1986 Madras 273) and the decision of the Kerala High Court in KUMARAN v. MOHAMMED KHADER (1995 ACJ 173) and submitted that since the amount has been awarded by way of loss to the estate, the amount is liable for attachment. Learned counsel also referred to the decision of this Court in CANARA BANK v. PALANI (1995) 1 MLJ 410 and submitted that this Court has held that the money paid under the Insurance Policy is also liable to be attached when the money goes out of the hands of the Insurance Company as it ceases to retain the character 'payable' under the policy of insurance. Learned senior counsel submitted that the earlier decision of this Court in Janaki's case (AIR 1986 Madras 273) requires reconsideration as, according to the learned senior counsel, the provisions of the Fatal Accidents Act are substantive in nature, but whereas the provisions of the Motor Vehicles Act are procedural in nature and under the Fatal Accidents Act, the amount is deemed to be part of the estate which was failed to be noticed by the learned Single Judge in Janaki's case. Learned senior counsel therefore submitted that the learned Subordinate Judge was not correct in holding that the amount lying in the court deposit as well as in the bank deposit is not liable for attachment.

6. Mr. V. Raghavachari, learned counsel for the respondents, on the other hand, submitted that the amount paid under the Motor Accidents Claims Tribunal was not paid for the loss to the estate and hence, it is not part of the estate and the amount is not liable to be attached. Learned counsel relied upon the decision of this Court in Janaki's case (AIR 1986 Madras 273) and submitted that the amount was not awarded by the Claims Tribunal towards the loss to the estate, but towards the loss of dependency and therefore, the amount is not liable to be attached.

7. We have carefully considered the submissions of the learned senior counsel for the petitioner and the learned counsel for the respondents. We have gone through the award passed by the Motor Accidents Claims Tribunal and we find that a sum of Rs.13,44,000/- was awarded as compensation to the claimants for the loss of dependency. The award clearly shows that the Claims Tribunal has taken into account the contribution that would have been made by the deceased to the claimants had he been alive and arrived the loss of dependency at Rs.13,44,000/-. Learned senior counsel for the petitioner submitted that in the award it is stated a sum of Rs.13,44,000/- represents the loss of earning capacity. In our view, it is impermissible to pick one sentence from the award and contend that the amount was granted as compensation for the loss to the estate as a reading of the entire order shows that the compensation amount of Rs.13,44,000/- was awarded for the loss of dependency and not for the loss to the estate.

8. Mr. K. M. Vijayan, learned senior counsel referred to section 2 of the Fatal Accidents Act and submitted that amount of compensation was awarded towards pecuniary loss to the estate and it should be treated as part of the estate. We are unable to accept the said submission. The Supreme Court in GOBALD MOTOR SERVICE v. VELUWSAMI (AIR 196 2 SC 1) quoted with

approval the observations of Sir Shadi Lal, C.J. in *Secretary of State v. Gokal Chand* (ILR 6 Lah. 451) which read as under:-

" The law contemplates two sorts of damages; the one is the pecuniary loss to the estate of the deceased resulting from the accident; the other is the pecuniary loss sustained by the members of his family through his death. The action for the latter is brought by the legal representatives, not for the estate, but as trustees for the relatives beneficially entitled; while the damages for the loss caused to the estate and when recovered form part of the assets of the estate."

9. The Supreme Court in *Gobald Motor Service's case* (AIR 1962

SC 1) held that the award of damages/pecuniary loss to the estate resulting from the accident is different from the pecuniary loss sustained by the members of the family in the same accident. The Supreme Court also held that the action for the pecuniary loss sustained by the members of the family is brought by the legal representatives, not for the estate, but as trustees for the relatives beneficially entitled, but the damages for the loss caused to the estate are claimed on behalf of the estate and if recovered, that would form part of the estate. The Supreme Court laid down the law as under:-

" An illustration may clarify the position. X is the income of the estate of the deceased, Y is the yearly expenditure incurred by him on his dependants (we will ignore the other expenditure incurred by him). $X - Y$, i.e., Z is the amount he saves every year. The capitalised value of the income spent on the dependants, subject to relevant deductions, is the pecuniary loss sustained by the members of his family through his death. The capitalised value of his income, subject to relevant deductions, would be the loss caused to the estate by his death. If the claimants under both the heads are the same, and if they get compensation for the entire loss caused to the estate, they cannot claim again under the head of personal loss the capitalised income that might have been spent on them if the deceased were alive. Conversely, if they got compensation under S.1, representing the amount that the deceased would have spent on them, if alive, to that would have spent on them, if alive, to that extent there should be deduction in their claim under S.2 of the Act in respect of compensation for the loss caused to the estate. To put it differently, if under S.1 they got capitalised value of Y, under S.2 they could get only the capitalised value of Z, for the capitalised value of $Y + Z$, i.e. X, would be the capitalised value of his entire income.

(12) The law on this branch of the subject may be briefly stated thus: The rights of action under Ss.1 and 2 of the Act are quite distinct and independent. If a person taking benefit under both the sections is the same, he cannot be permitted to recover twice over for the same loss. In awarding damages under both the heads, there shall not be duplication of the same claim, that is, if any part of the compensation representing the loss to the estate goes into the calculation of the personal loss under S.1 of the Act, that portion shall be excluded in giving compensation under S.2 and vice versa."

The Supreme Court in *Gobald Motor Service's case* (AIR 1962 SC 1) also held that the compensation awarded and payable under section 1 of the Fatal Accidents Act represents the amount which the deceased would have spent on them, if he were alive and the compensation under section 2 of the said Act

would represent the damages for mental agony and sufferings and loss of expectation of life and there should be no duplication in awarding damages under both the heads.

10. The Supreme Court in *C.K.S.IYER AND ORS. v. T.K.NAIR AND SIX ORS.* (1969 (3) SCC 64) held that the rights under sections 1-A and 2 are different and the law laid down by the Supreme Court reads as under:-
" The rights under the two provisions are quite distinct and independent. Under the former section the damages are made payable to one or the other relations enumerated therein whereas the latter section provides for the recoupment of any pecuniary loss to the estate of the deceased occasioned by the wrongful act complained of."

The Supreme Court quoted with approval the observations of Lord Wright in *Devies and Another v. Powell Dufferyn Associated Collieries Ltd.* (1942 AC 157) as under:-

" The general nature of the remedy under the Fatal Accidents Acts has often been explained. These Acts 'provided a new cause of action and did not merely regulate or enlarge an old one', as Lord Sumner observed in *Admiralty Commissioners v. S.S.Amerika* (1917) AC 38,52. The claim is, in the words of Bowen L.J., in *The Vera Cruz* (No.2) 188 4) 9 PD 96, 101 for injuriously affecting the family of the deceased. It is not a claim which the deceased could have pursued in his own life time, because it is for damages suffered not by himself, but by his family after his death. The Act of 1846, Section 2 provides that the action is to be for the benefit of the wife or other member of the family, and the jury (or judge) are to give such damages as may be thought proportioned to the injury resulting to such parties from the death. The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing the damages all circumstances which may be legitimately pleaded in diminution of the damages must be considered: *Grand Trunk Ry. Co. of Canada v. Fennings* (13 Appeal Cases 800,804) The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit, and, on the other, any pecuniary advantage which from whatever source comes to him by reason of the death."

11. A Division Bench of the Andhra Pradesh High Court consisting of Mr.Jeevan Reddy,J. and Mr.Jagannadha Rao,J.(as their Lordships then were) in *A.P.S.R.T. CORPN. v. SHAFIYA KHATOON* (1985 ACJ 212) held that "the loss to the estate comprises of damages that are payable to the deceased towards physical injuries sustained by him as representing pain and suffering (see *Compensation for pain & suffering* by Arye Miller at p.554 of *International & Comparative Law Quarterly*, 1982 p.554) and for loss of amenities for the period between the time of accident and the time of death, together with a conventional small sum towards loss of expectation of life. These are all treated as nonpecuniary benefits".

The Bench of the Andhra Pradesh High Court also held as under:-
"We therefore hold that the loss to the 'estate' cannot be increased by computing the 'lost earnings' for the 'lost years'."

12. The law that has been laid down by the Supreme Court in *Gobald Motor Service's* case is that it is not open to the claimant to claim compensation under both the heads and it is not possible to claim damages

twice for the same loss and the duplication of the claim should be avoided and if any part of the compensation representing the loss to the estate goes into the calculation of the personal loss under section 1 of the Fatal Accidents Act, that portion should be excluded in giving compensation under section 2 and vice versa.

13. Loss to the estate is awarded by way of convention normally of a small sum. A Division Bench of the Delhi High Court consisting of Mr.V.S.Deshpande, C.J. and Mr.B.N.Kirpal,J. (as His Lordship then was) in *DEWAN HARI CHAND v. MUNICIPAL E OF DELHI* (1981 ACJ 1 31) held that a claim under section 1-A of the Fatal Accidents Act is a claim to compensation for the loss caused to the dependants by the death inasmuch as the dependants are deprived of the maintenance being received from the deceased. The Delhi High Court also held that under section 2 of the said Act the cause of action for compensation is the loss to the estate, if any, caused by the death and it is only when the deceased was in a position to effect a net saving from his income after maintaining the dependants and himself that the estate would have accretion from his income and if his death causes a loss of such accretion, then it would be a loss to the estate. As a matter of law, there is a well marked distinction between compensation amount awarded for the loss to the estate and the compensation awarded for the loss of dependency, though both may arise due to the same cause, and the starting point for assessing the damages is the probable income of the deceased, he would have earned, had he been alive, which is the measure for compensation, but ultimately, in one case it is awarded for the loss which the dependants would have suffered and in the other case, it is awarded for the loss to the estate. In the present case, the question of loss to the estate has not arisen, as the Claims Tribunal found that the entire income would have been spent for the benefit of the dependants and there is no balance to accrue for the benefit of the estate of the deceased.

14. We therefore hold that though the Claims Tribunal held that a sum of Rs.13,44,000/- would represent the loss of earning capacity, it is actually a compensation paid for the loss of dependency which is not part of estate of the deceased. It was awarded as compensation to the legal representatives for the loss and sufferings on account of the death of the deceased. We therefore approve the reasonings of the learned Single Judge of this Court in Janaki's case (AIR 1986 Madras 273). The learned Single Judge in that case held that the compensation awarded for the death of a person is not liable to be attached and is excluded from the decree for attachment. Learned Single Judge held that in order that a property should be regarded as part of the estate of the deceased, the following tests should be satisfied; (a) the property must be in existence at any time before the death of the deceased; (b) the deceased must have a beneficial interest, be it in praesenti or contingent, in the property; (c) the deceased must be in possession and control, be it actual, constructive or beneficial, of the property; and (d) the deceased must have power to dispose of such property. We find that in the instance case, none of the tests is satisfied to regard the compensation awarded as part of the estate of the deceased advocate.

15. The Punjab and Haryana High Court in *BIHARILAL SHANNU RAM*

v. BIHARI LAL WADHWA (1991 ACJ 677) has also taken the view that the compensation awarded to the legal representatives on the death of a person does not form part of the estate of the deceased and could not be attached in the execution of the decree against the deceased. The Kerala High Court in K.LEKSHMI v. CHAIRMAN , K.S.R.T.C. (1984 ACJ 79) has also held that the claim under section 1-A of the Fatal Accidents Act is a claim made by the dependants on their own account and it is a statutory right and therefore the requirement of obtaining succession certificate is not necessary to prefer a claim or to receive the amount. Mr.V.Raghavachari, learned counsel also referred to the decision of the Supreme Court in M.CT. MUTHIAH & ANR. v. CONTROLLER OF ESTATE DUTY (161 ITR 768) and the decision supports the case of the respondents. We hold that the amount of compensation is payable only to the legal heirs on the account of death of the deceased and it is not part of the estate of the deceased.

16. As far as the decision of a Division Bench of the Kerala High Court in KUMARAN v. MOHAMMED KHADER (1995 ACJ 173) on which heavy reliance was placed by the learned senior counsel for the petitioner is concerned, the Division Bench of the Kerala High Court held that the compensation awarded by way of loss to the estate could be attached. As we have already held that the compensation, in the instance case, has been awarded for the loss of dependency and the case falls within the ambit of section 1-A of the Fatal Accidents Act and the decision in Kumaran's case (1995 ACJ 173) does not really support the case of the petitioner. As far as the reliance placed on section 60 C.P.C. is concerned, we have already held that the amount sought to be attached does not belong to the estate of the deceased and hence, in terms of section 52 C.P.C. and in terms of the decree granted in favour of the petitioner, the amount in question is not liable to be attached, since it is outside the scope and ambit of section 60 C.P.C., though the amount is not one of the enumerated items which are exempt from attachment.

17. Consequently, we hold that the learned Single Judge in Janaki's case (AIR 1986 Madras 273) was correct in holding that the compensation awarded by the Claims Tribunal for the death of the deceased does not form part of the estate of the deceased and it is not liable to be attached by the decree holder in the decree obtained against the estate of the deceased. We approve the reasonings and the conclusion of the learned Single Judge in Janaki's case (AIR 1986 Madras 273). In the result, the Civil Revision petition fails and the same is dismissed. However, in the circumstances, there will be no order as to costs. Connected C.M.P. No.7659 of 2002 and VCMP.No.10389 of 2002 are closed.

Index: Yes

Website: Yes

na.

□